# First Nations Water Rights in British Columbia

*A Historical Summary of the rights of the Kitsumkalum First Nation*

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# *FIRST NATIONS WATER RIGHTS IN BRITISH COLUMBIA:*

## *A Historical Summary of the rights of the Kitsumkalum First Nation*

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|---|---|
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Gary Robinson
Project Manager
Water Management Branch

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# FIRST NATION WATER RIGHTS REPORT


**BAND:** Kitsumkalum

**ADDRESS:** P.O. Box 544, Terrace, BC V8G 4B5

**CHIEF:** Steve Roberts

**PHONE:** 635-6177 **FAX:** 635-4622

**AFFILIATION:** Tsimshian Tribal Council


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## LOCATION:

The Kitsumkalum Band occupy three (3) reserves located approximately 5 kilometres west of the city of Terrace. The reserves range in size from 2.0 to 455.1 hectares. The Kitsumkalum Reserves include:

Dalk-ka-gila-quoeuxz No. 2 Kitsumkaylum No. 1
Zimagord No. 3

A fourth reserve, Port Essington, is held in common for Kitsumkalum and Kitselas. Of the 4 reserves only Kitsumkaylum No. 1 has allocations of water rights associated with it. Kitsumkaylum No. 1 is comprised of 455.1 hectares and is located immediately west of Terrace.

The most recent population figures compiled by the Ministry of Finance report that the Kitsumkalum Band's total population, including registered and non-registered members living on- and off-reserve, is 540.

All of the four Kitsumkalum reserves are located in the Coast Mountain Range and are classified as occurring in the Coastal Western Hemlock Biogeoclimatic zone. The Coastal Western Hemlock Biogeoclimatic zone is characterized by abundant rainfalls and mild temperatures. The combination of these characteristics makes the forests in the area some of the most productive in Canada.

The Kitsumkalum reserves lie at elevations ranging from 450 to 1,800 metres above mean sea level, and experience a climate in which average daily temperatures range from lows of 0 degrees centigrade (in January), to highs no greater than 16 degrees centigrade (in July). Annual rainfall for the area averages between 100 and 250 centimeters.

Water courses of significance to the Kitsumkalum Band, in terms of formal water allotments, include:

- **Eneeksagilaguaw Creek** - flows southeast through Kitsumkaylum Reserve No. 1 and discharges into the Skeena River.

## WATER ALLOCATIONS:

There are no records of water allocations made by either the Indian Reserve Commission, the Lieutenant Governor-in-Council (by Order-In-Council), or the Board of Investigation (by Order). The water rights of the Band have been determined by two actions of government over the years:

1) The granting of water licenses in response to Federal Government applications requesting authorization for the use of water on reserve lands.

2) Actions to amend, cancel or record as abandoned licensed rights, pursuant to provisions in the *Water Act*.

## HISTORY, CURRENT STATUS AND NOTES:

The history of water rights, the current status of rights, and notes for the Kitsumkalum Band with respect to Eneeksagilaguaw Creek are as follows:

### Eneeksagilaguaw Creek

**History:**

**Jan 2, 1974** In response to an application made by the Superintendent General of Indian Affairs on behalf of the Kitsumkalum Band, the Comptroller of Water Rights issued Conditional Water License 41644. The license was assigned a precedence date of August 5, 1970 and authorizes the diversion of 25,000 gallons of water per day, year round from Ne-aksa-gilaguaw Creek for waterworks purposes. The appurtenant lands are specified as Kitsumkaylum Reserve No. 1.

**Mar 8, 1979** Having determined that the source of the water supply was erroneously stated, the Comptroller of Water Rights issued an Order under the Water Act, which amended clause (a) of Conditional Water License 41644 to read as follows:

*"The source of water-supply is Eneeksagilaguaw Creek."*

**Apr 4, 1989** The Kitsumkalum Band Council and the Department of Indian Affairs and Northern Development applied for a Watershed Map Reserve to be established on the north bank of Skeena River up-stream from the southwest corner of Lot 1718. The Reserve was intended to protect the Eneeksagilaguaw Creek drainage area. Water from the Creek would be used for drinking and fire protection purposes.

**Apr 9, 1992** A Water Allocation Technician at Smithers wrote to the Kitsumkalum Band Council stating that a Watershed Reserve would not be established for the following reasons:

- 90% of the Eneeksagilaguaw Creek watershed lies within the Kitsumkalum Reserve. As Reserve lands fall under Federal jurisdiction the Ministry is not in a position to establish a water reserve.

- The remaining portion of the watershed lies within the Kitsumkalum Mountain Recreation Area. This area is already subject to a reserve which ensures that appropriate agencies will be notified of any proposed activities within the area.

**Current Status:**

Conditional Water License 41644 is the only active license on Eneeksagilaguaw Creek. It is for the use and benefit of the Kitsumkalum Band.

The Water Survey of Canada has no records of streamflow on Eneeksagilaguaw Creek. Over the course of this investigation no other current sources of water availability information were determined.

**Notes:**

1. Conditional Water License 41644 currently licenses waterworks applications of the water. As such the Eneeksagilaguaw Creek drainage area qualifies for designation as a 'Community Watershed' under provisions contained in the Forest Practices Code.

## OTHER INFORMATION:

### Groundwater Records:

A review of well records maintained by the MELP - Groundwater Section found that one well has been reported on Kitsumkaylum Reserve No. 1, and one well reported on Zimagord Reserve No. 3. The wells reportedly yield small amounts of water, ranging from 12 gallons per minute to 75 gallons per minute. The extent to which these wells are currently utilized is unknown. Further details have been appended to the report.

As provision of well information to the Groundwater Section is voluntary, this review should not be assumed to be complete.

### Alternate Water Sources:

The proximity of Dalk-ka-gila-quoeuxz No. 2, Kitsumkaylum No. 1 and Zimagord No. 3 to the city of Terrace presents the potential for water supply to the reserves via connection to the Terrace municipal water system. Additionally, because of it's location relative to the three reserves, the Skeena River also should be considered as an alternate source of water.

| Summary of Water Rights | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| **Kitsumkalum First Nation** | | | | | | | | |
| **Water Source** | **Priority Date** | **Reserve Name** | **File No.** | **Document Type** | **Status** | **Superceded By** | **License PUC/MOD & OIC Allotments** | **Comments** |
| Eneeksagilaguaw Creek | 1970/08/05 | Kitsumkaylum # 1 | 0296963 | C 41644 | Current | | 25,000 GAD/Waterworks | |

**LEGEND:**

**License Types (Document Types)**
CL: Conditional License
FL: Final License
Z: Application

**Mechanisms for Allocation (Document Type)**
OIC: Order-in-Council (as issued by the Lieutenant Governor in Council)
MOD: Minute of Decision (as recorded under the Indian Reserve Commission)
IRC: Indian Reserve Commission
AGBC: Attorney Generals Office of BC (followed by File #)

**Allotment Units**
GAD: Gallons a day
AF: Acre feet
CFS: Cubic feet per second

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British Columbia

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the Environment

WATER RIGHTS BRANCH

# ORDER

## WATER ACT

Section 15

FILE NO. 0296963

In the matter of Conditional Water Licence 41644, which authorizes the diversion of water from Ne-aksa-gilaguaw Creek for waterworks purpose.

Having determined that the source of the water-supply was erroneously stated and being satisfied that no person's rights will be injuriously affected, I hereby amend Clause (a) of the said licence to read as follows:

(a) The source of the water-supply is Eneeksagilaguaw Creek.

Dated at Victoria, B.C. this 8th day of March, 1979.

H.D. DeBeck,
Comptroller of Water Rights.

WATER RESOURCES SERVICE
WATER RIGHTS BRANCH

DEPARTMENT OF LANDS, FORESTS,
AND WATER RESOURCES

THE PROVINCE OF BRITISH COLUMBIA—WATER ACT

# CONDITIONAL WATER LICENCE

Her Majesty the Queen in the Right of Canada as represented by the Minister of Indian Affairs and Northern Development (Terrace Agency) of Ottawa, Ontario.

is/are hereby authorized to divert and use water as follows:—

(*a*) The source(s) of the water-supply is/are Ne-aksa-gilaguaw Creek.

(*b*) The point(s) of diversion is/are located as shown on the attached plan.

(*c*) The date from which this licence shall have precedence is 5th August, 1970.

(*d*) The purpose for which the water is to be used is waterworks.

(*e*) The maximum quantity of water which may be diverted is 25,000 gallons a day,

and such additional quantity as the Engineer may from time to time determine should be allowed for losses.

(*f*) The period of the year during which the water may be used is the whole year.

(*g*) The land upon which the water is to be used and to which this licence is appurtenant is Indian Reservation #1, Kitsumkaylum, Range 5, Coast District, except Canadian National Railway Right-of-Way (Plan 1449).

(*h*) The works authorized to be constructed are diversion structure and pipe,

which shall be located approximately as shown on the attached plan.

(*i*) The construction of the said works has been commenced and shall be completed and the water beneficially used on or before the 31st day of December, 1976.

H.D. DeBeck,
*Comptroller of Water Rights.*

File No. 0296963 Date issued: 2nd January, 1974 Conditional Licence No. 41644

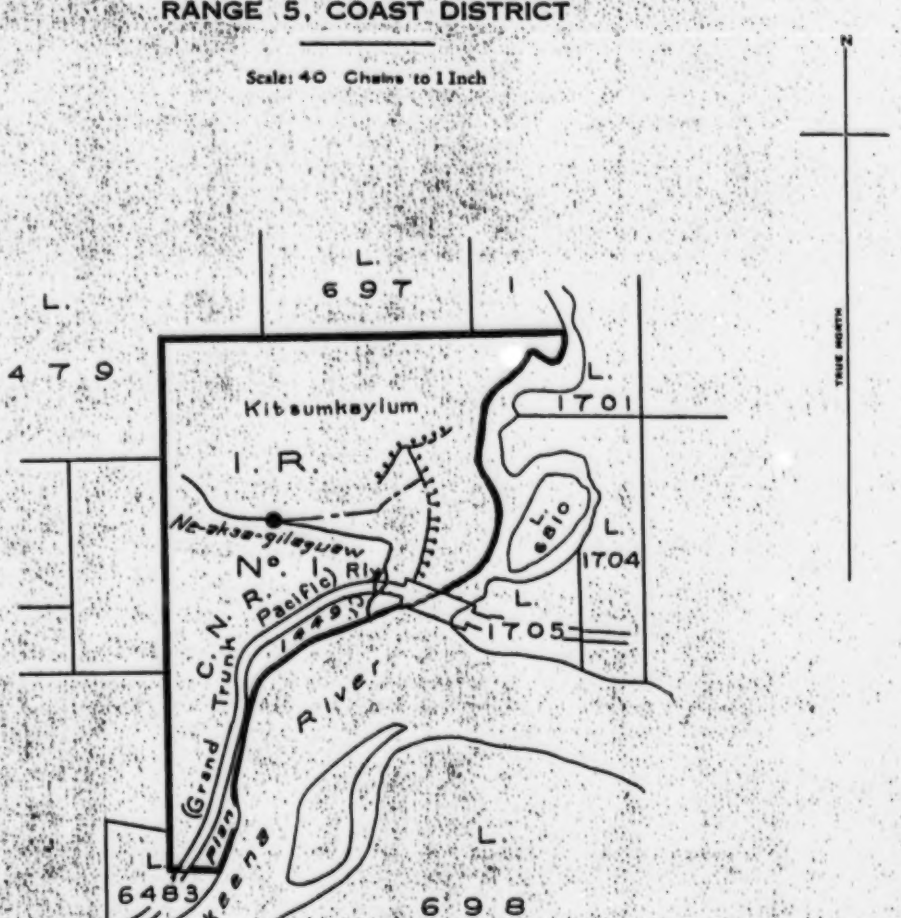
ENTERED ON
Map No. 103.I/NE (4-5-3)
By

# British Columbia

## PRINCE RUPERT WATER DISTRICT

### RANGE 5, COAST DISTRICT

Scale: 40 Chains to 1 Inch




**LEGEND**

Point of Diversion ●

Ref. Map 103 I/NE (A-2,3)

Pipe ———

The boundaries of the land to which this licence is appurtenant are shown thus: ■■■■

TERRACE PRECINCT

Signature [signature]

Date 2nd Jan. 1974

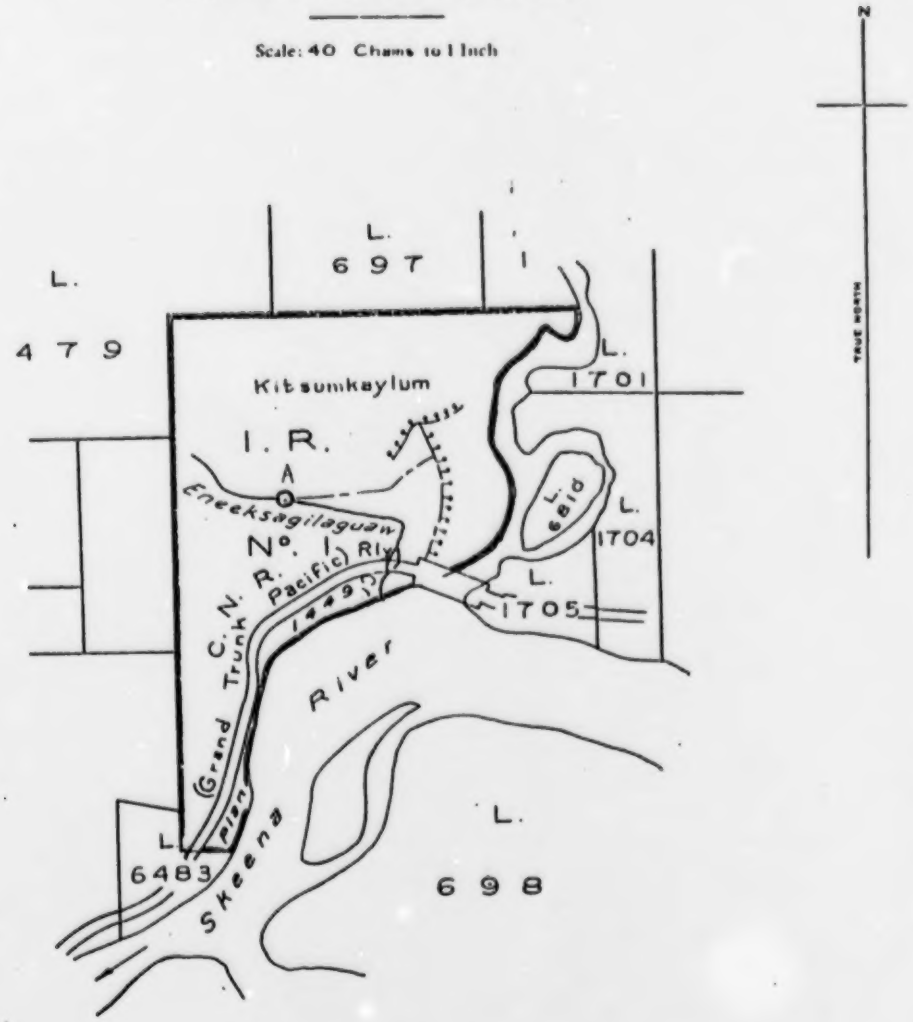
CL 41644

File 0296963

# British Columbia

## PRINCE RUPERT WATER DISTRICT
## RANGE 5, COAST DISTRICT

Scale: 40 Chains to 1 Inch




**LEGEND**

Point of Diversion ⊙
Ref. Map ~~103-I/NE (10b)~~ 103·I·057 (9242 TT)
Pipe — - —

The boundaries of the land to which this licence is appurtenant are shown thus: ▬▬▬

Signature

Date 8th March 1979
Amended C.L.41644
File 0296963

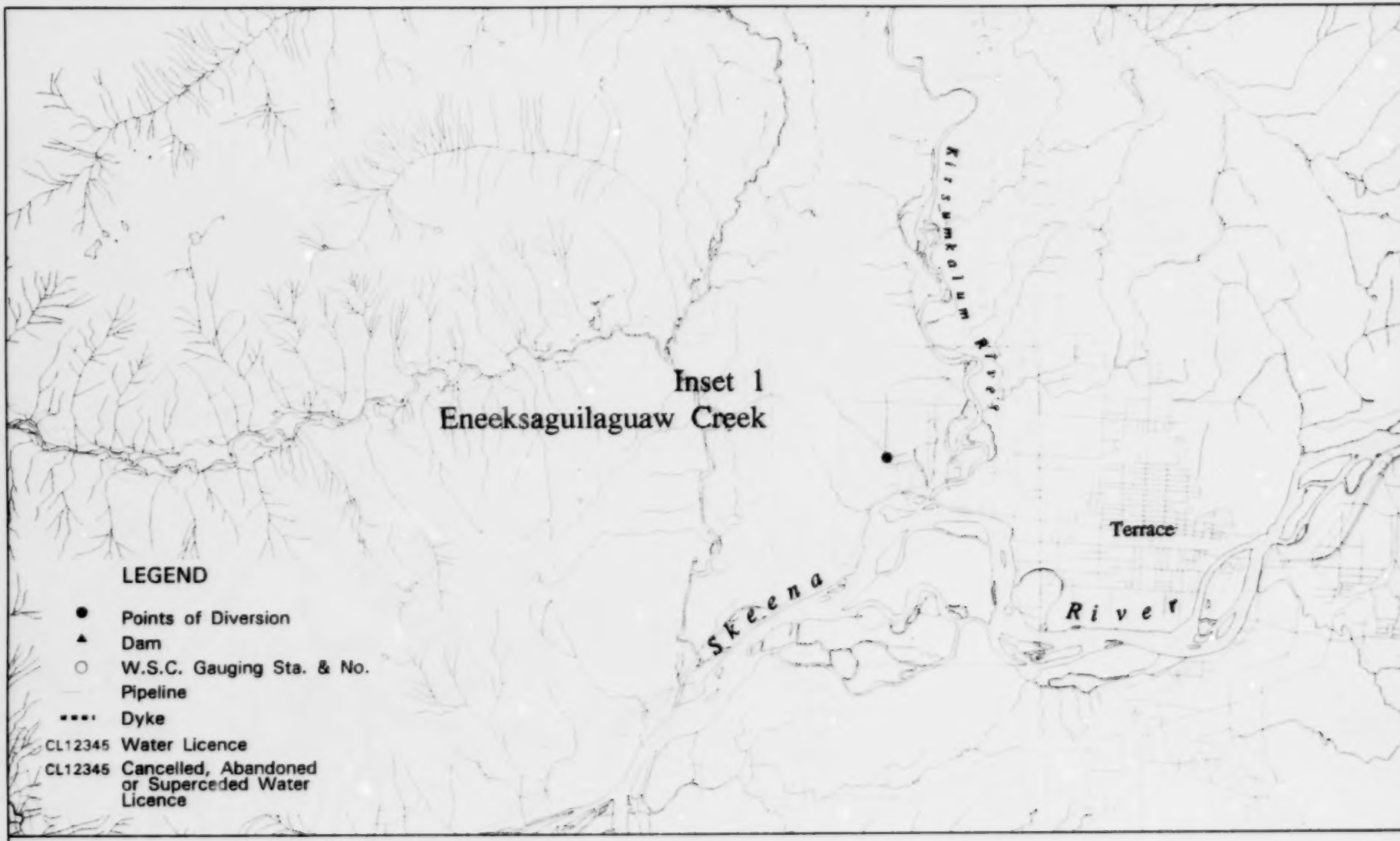
Terrace Precinct

Stream Register Report  Water Licence Information System

Report Requested By : BABRAHS
Date Report Requested : 1996/06/20 14:19
Report Sorted By : Source Gazetted - Priority Date - Licence Number
Selection Criteria
START POINT : F036036 - 103.I.057 A
END POINT : 8021183 - Kneeksegilaguaw Creek right of Skeena River

| BCGS Map Area | Well No. | Well Tag No. | Lot No. | Plan No. | Blk No. | TP | RC | RG | D.L. | S | X | Y | Old Well No. | L.D. | Site Address | Date Constructed (day) | Well Depth (ft.) | Well Diam. (in.) | Drill Contr No. | Const. Method | Well Yield | Yld. Unt. | Depth to Water (ft.) | Depth to Bedrk (ft.) | Aquif Litho | Screen Interval (ft.) | O.W. Rpc | Chem Lab | Chem Fld | Chem Site No. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 103I.047.3.4.1 | 001 | 0000000044464 | | | | | | | 2249 | 01 | 00 | 00 | 000 | 14 | | 01-01-1950 | 15.0 | 0.0 | UNK | DUG | | | 6 | UNK | UNC | | | | Y | |
| 103I.047.3.4.1 | 002 | 0000000045948 | | | | | | | 2349 | 00 | 00 | 00 | 000 | 14 | | 01-01-1950 | 14.0 | 0.0 | UNK | DUG | | | 8 | UNK | UNC | | | | | |
| 103I.047.3.4.1 | 003 | 0000000043560 | | | | | | | | 00 | 00 | 00 | 000 | 14 | HIGHWAY BRIDGE | 08-01-1979 | 68.0 | 6.0 | 127 | OTH | 1.0 | GPM | 10 | 23 | RED | | | | | |
| 103I.047.3.4.1 | 004 | 0000000047007 | 3 | 4270 | | | | 5 | 1707 | 00 | 00 | 00 | 000 | 14 | | 01-01-1981 | 160.0 | 6.0 | 044 | DRI | 3.0 | GPM | UNK | 25 | RED | | | | | |
| 103I.047.3.4.1 | 005 | 0000000046430 | | | | | | 5 | | 00 | 00 | 00 | 000 | 14 | HWY 16 | 10-10-1986 | 125.0 | 6.0 | 044 | DRI | 12.0 | GPM | UNK | 82 | RED | | | | | |
| 103I.047.3.4.4 | 001 | 0000000040612 | 8 | 4114 | | | | 5 | 1717 | 00 | 00 | 00 | 000 | 14 | NEW REMO | 04-08-1994 | 35.0 | 6.0 | 422 | DRI | 20.0 | | 12 | | UNC | | | | | |
| 103I.057.3.1.4 | 001 | 0000000042582 | | | | | | | | 00 | 00 | 00 | 000 | 14 | KITSUMKALUM | 09-06-1979 | 64.0 | 6.0 | 127 | OTH | 75.0 | GPM | 13 | UNK | UNC | 54-62 | | | | |
| 103I.057.3.2.1 | 001 | 0000000041102 | 5 | 4491 | | | | 5 | 616 | 00 | 00 | 00 | 000 | 14 | 2808 SKEENA ST | 01-01-1976 | 65.0 | 6.0 | 127 | OTH | 25.0 | GPM | 3 | UNK | UNC | | | | | |
| 103I.057.3.2.1 | 002 | 0000000040446 | A | 7134 | | | | 5 | 4355 | 00 | 00 | 00 | 000 | 14 | SKAUNE ISLAND CH KEP | 12-09-1994 | 30.0 | 6.0 | 422 | DRI | 12.0 | GPM | 15 | | UNC | | | | | |
| 103I.057.3.2.1 | 003 | 0000000040502 | | 1074 | 11 | | | | 4355 | 00 | 00 | 00 | 000 | 14 | 2211 DOLL RD | 11-12-1993 | 130.0 | 8.0 | 422 | DRI | 25.0 | USGM | 17 | | UNC | | | | | |
| 103I.057.3.2.1 | 004 | 0000000040441 | A | 7134 | | | | 5 | 4355 | 00 | 00 | 00 | 000 | 14 | KEPPEL RD | 07-09-1994 | 30.0 | 0.0 | 422 | DRI | 14.0 | GPM | | | UNC | | | | | |
| 103I.057.3.2.3 | 001 | 0000000040510 | | | 1 | | | | 1704 | 00 | 00 | 00 | 000 | 14 | | 01-01-1950 | 140.0 | 7.0 | 321 | DRI | | | UNK | UNK | UNC | | | | | |
| 103I.057.3.2.4 | 001 | 0000000052999 | 3 | 4349 | 12 | | | | 342 | 00 | 00 | 00 | 000 | 14 | 5112 HWY 16 | 04-11-1983 | 50.0 | 6.0 | 044 | DRI | 30.0 | GPM | UNK | UNK | UNC | | | | | |
| 103I.057.3.2.4 | 002 | 0000000030455 | 8 | 4827 | | | | | 342 | 00 | 00 | 00 | 000 | 14 | | 26-07-1974 | 172.0 | 0.0 | 044 | UNK | 30.0 | GPM | 30 | UNK | UNC | | | | | |
| 103I.057.3.2.4 | 003 | 0000000029470 | B | 5239 | | | | 5 | 611 | 00 | 00 | 00 | 000 | 14 | 5028 FOGLE ST | 07-05-1976 | 40.0 | 6.0 | 127 | OTH | 25.0 | GPM | 18 | UNK | UNC | | | | | |
| 103I.057.3.2.3 | 001 | 0000000028434 | 5 | 4426 | | | | 5 | 1702 | 00 | 00 | 00 | 000 | 14 | KALUM DR | 01-01-1978 | 230.0 | 4.0 | 040 | DRI | | | UNK | UNK | UNC | | | | | |
| 103I.057.3.2.4 | 002 | 0000000040456 | 4 | 4527 | 8 | | | 5 | 693 | 00 | 00 | 00 | 000 | 14 | SOUTH OF RESIDENCE,8 | 02-12-1993 | 240.0 | 0.0 | 433 | DRI | | | 23 | | UNC | | | | | |
| 103I.057.3.2.4 | 001 | 0000000033106 | A | 9044 | | | | 5 | 591 | 00 | 00 | 00 | 000 | 14 | | 01-06-1975 | 201.0 | 6.0 | 127 | OTH | 0.0 | GPM | 34 | UNK | UNC | 195-201 | | | | |
| 103I.057.3.2.4 | 002 | 0000000033149 | 8 | 4821 | | | | | 591 | 00 | 00 | 00 | 000 | 14 | HUCKLEBERRY LANE | 01-09-1974 | 98.0 | 0.0 | 127 | DRI | | | 61 | UNK | UNC | 94-98 | | | | |
| 103I.057.3.2.4 | 003 | 0000000044427 | 7 | 4813 | | | | 5 | 591 | 00 | 00 | 00 | 000 | 14 | | 01-01-1985 | 260.0 | 6.0 | 044 | DRI | 7.0 | GPM | UNK | UNK | UNC | | | | | |
| 103I.057.3.2.4 | 004 | 0000000042435 | 3 | 4813 | | | | 5 | 591 | 00 | 00 | 00 | 000 | 14 | | 31-05-1979 | 114.0 | 0.0 | 100 | DRI | 40.0 | GPM | 50 | UNK | UNC | | | | | |
| 103I.057.3.2.4 | 005 | 0000000037266 | 16 | 4813 | | | | 5 | 591 | 00 | 00 | 00 | 000 | 14 | WOODLAND PARK | 29-05-1977 | 103.0 | 6.0 | 127 | OTH | 12.0 | GPM | 64 | UNK | UNC | | | | | |
| 103I.057.3.2.4 | 006 | 0000000040137 | 6 | 4813 | | | | 5 | 591 | 00 | 00 | 00 | 000 | 14 | WOODLAND PARK | 19-07-1978 | 112.0 | 5.0 | 127 | OTH | 11.0 | GPM | 48 | UNK | UNC | 107-113 | | | | |
| 103I.057.3.2.4 | 007 | 0000000037708 | 15 | 4813 | | | | 5 | 591 | 00 | 00 | 00 | 000 | 14 | HUCKLEBERRY LANE | 01-12-1974 | 126.5 | 6.0 | 127 | OTH | 8.0 | GPM | 47 | UNK | UNC | 116-126 | | | | |
| 103I.057.3.2.4 | 008 | 0000000032627 | 1 | 4710 | | | | 5 | 592 | 00 | 00 | 00 | 000 | 14 | | 01-07-1975 | 116.0 | 6.0 | 127 | OTH | 15.0 | GPM | 52 | UNK | UNC | 107-116 | | | | |
| 103I.057.3.2.4 | 009 | 0000000032611 | 17 | 4786 | | | | 5 | 592 | 00 | 00 | 00 | 000 | 14 | NORTH HERKLEY RD | 01-06-1975 | 146.0 | 0.0 | 127 | OTH | 10.0 | GPM | 43 | UNK | UNC | 140-146 | | | | |
| 103I.057.3.2.4 | 010 | 0000000032260 | | | | | | 5 | 592 | 00 | 00 | 00 | 000 | 14 | WOODLAND PARK | 01-06-1975 | 207.0 | 6.0 | 127 | OTH | | | 47 | UNK | UNC | 203-207 | | | | |
| 103I.057.3.2.4 | 011 | 0000000044434 | 4 | 4811 | | | | 5 | 592 | 00 | 00 | 00 | 000 | 14 | WILLOW CR DRIVE | 01-01-1986 | 40.0 | 6.0 | 044 | DRI | 40.0 | GPM | UNK | UNK | UNC | | | | | |
| 103I.057.3.2.4 | 012 | 0000000033978 | | 4811 | 2 | | | 5 | 592 | 00 | 00 | 00 | 000 | 14 | WILLOW CR DRIVE | 20-05-1984 | 40.0 | 6.0 | 022 | DRI | 10.0 | GPM | 2 | UNK | UNC | | | | | |
| 103I.057.3.2.4 | 013 | 0000000033112 | 18 | 4811 | | | | | 592 | 00 | 00 | 00 | 000 | 14 | | 01-08-1975 | 92.0 | 6.0 | 127 | OTH | 15.0 | GPM | 27 | UNK | UNC | | | | | |
| 103I.057.3.2.4 | 014 | 0000000045265 | 18 | 4784 | | | | | 592 | 00 | 00 | 00 | 000 | 14 | HERKLEY RD | 07-06-1980 | 122.0 | 8.0 | 127 | DRI | 20.0 | USGM | 56 | UNK | UNC | | | | | |
| 103I.057.3.2.4 | 015 | 0000000037136 | 12 | 4784 | | | | 5 | 592 | 00 | 00 | 00 | 000 | 14 | HERKLEY RD | 09-06-1987 | 158.0 | 6.0 | 044 | DRI | 30.0 | GPM | UNK | UNK | UNC | | | | | |
| 103I.057.3.2.4 | 016 | 0000000045484 | 14 | 4784 | | | | | 592 | 00 | 00 | 00 | 000 | 14 | HERKLEY RD | 01-01-1986 | 160.0 | 6.0 | 044 | DRI | 40.0 | GPM | UNK | UNK | UNC | | | | | |
| 103I.057.3.2.4 | 017 | 0000000037137 | 16 | 4784 | | | | | 592 | 00 | 00 | 00 | 000 | 14 | HERKLEY RD | 08-06-1987 | 150.0 | 6.0 | 044 | DRI | 40.0 | GPM | UNK | UNK | UNC | | | | | |
| 103I.057.3.2.4 | 018 | 0000000037917 | 6 | 4813 | | | | | 591 | 00 | 00 | 00 | 000 | 14 | WOODLAND PARK | 15-06-1977 | 116.0 | 6.0 | 127 | DRI | 5.0 | GPM | 41 | UNK | UNC | | | | | |
| 103I.057.3.2.4 | 019 | 0000000040421 | 2 | 4813 | | | | 5 | 591 | 00 | 00 | 00 | 000 | 14 | 5161 FOXBERRY | 07-09-1993 | 165.0 | 9.0 | 422 | DRI | 5.0 | GPM | 135 | | UNC | | | | | |
| 103I.057.3.2.4 | 020 | 0000000041428 | 3 | 4813 | | | | 5 | 591 | 00 | 00 | 00 | 000 | 14 | WOODLAND PARK DRIVE | 04-03-0092 | 178.0 | 0.0 | 045 | DRI | 2.0 | USGM | 43 | | UNC | 170-178 | | | | |
| 103I.057.3.3.2 | 001 | 0000000029843 | | | | | | | 1397 | 00 | 00 | 00 | 000 | 14 | NORTH CALUM LAKE DRI | 05-11-1949 | 197.0 | 8.0 | 312 | DRI | 40.0 | GPM | UNK | UNK | UNC | | | | | |
| 103I.057.3.3.2 | 002 | 0000000041424 | A | 11713 | | | | 5 | 1119 | 00 | 00 | 00 | 000 | 14 | DEEP CREEK SUBDIVISI | 09-07-0089 | 126.0 | 0.0 | 422 | DRI | 15.0 | USGM | 94 | | UNC | | | | | |

---------- END OF REPORT WELL4600 ----------



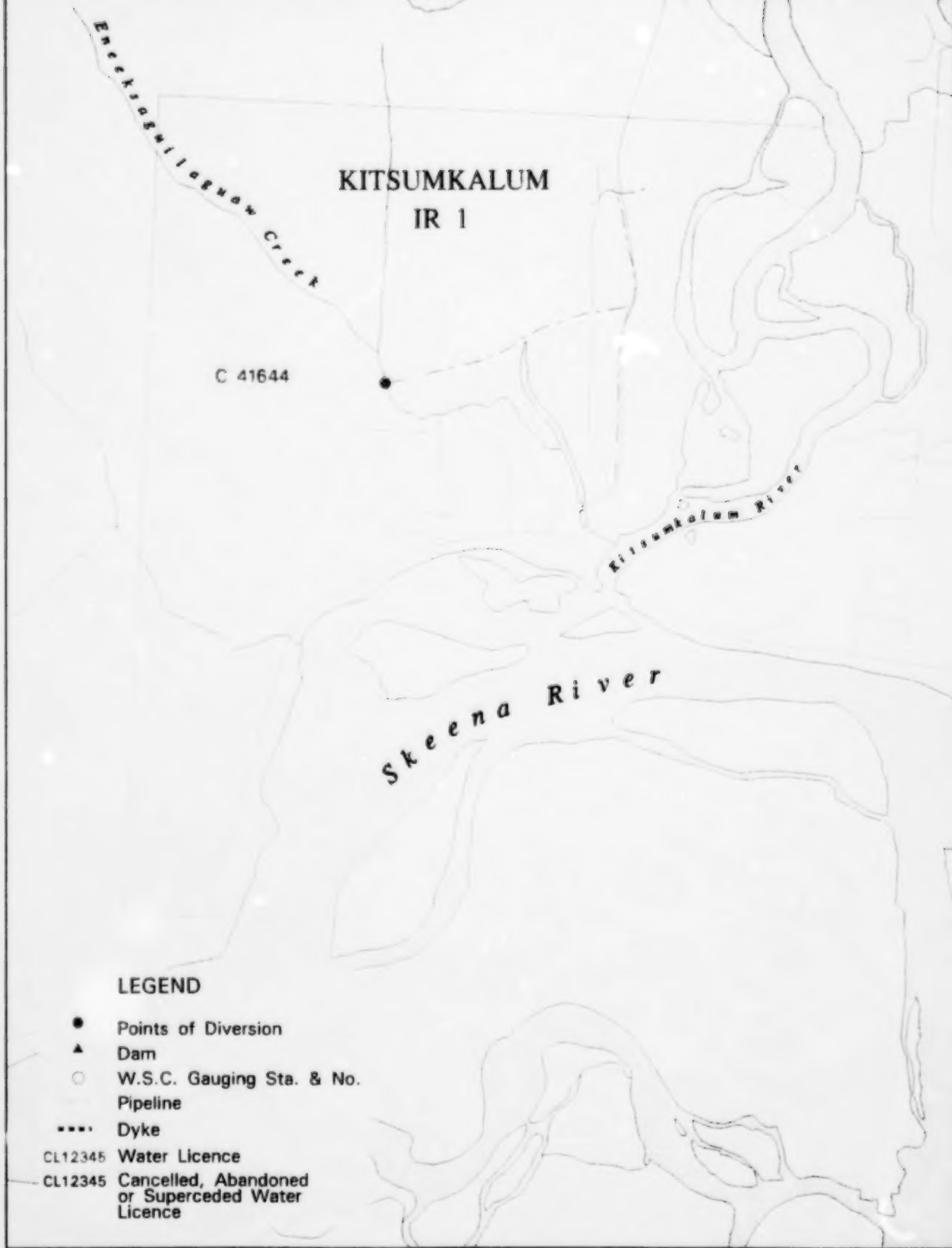

# Kitsumkalum

Scale 1:100,000

Ministry of Environment, Lands & Parks

Date: October 22, 1997

Environment & Lands Division




# Eneeksaguilaguaw Creek

Scale 1:20,000

Ministry of Environment, Lands & Parks  Date: October 22, 1997  Environment & Lands Division